

# LAST MINUTE AGENDA INFORMATION

## 7/11/12 Special Meeting

*(Agenda Related Writings/Documents provided to a majority of the City Council after distribution of the Agenda Packet for the June 11, 2012 Special meeting.)*

<u>ITEM NO.</u>	<u>DESCRIPTION</u>
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<b>1</b>	<p>ADOPTION OF RESOLUTION NO. SA-12-09 OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY APPROVING THE PAYMENT OF SUCCESSOR AGENCY FUNDS IN THE TOTAL AMOUNT OF \$372,114.91 TO THE COUNTY OF SAN DIEGO AS DEMANDED BY THE COUNTY OF SAN DIEGO PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTION 34183.5(B)(2)(A) DUE ON OR BEFORE JULY 12, 2012 AND MAKING THE PAYMENT UNDER PROTEST WITH RESERVATION OF RIGHTS. (0418-50)</p> <p>1. Staff Report and Resolution</p>
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STAFF REPORT  
IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY

2012 JUL 11 PM 3:42

TO: CHAIR AND MEMBERS OF THE SUCCESSOR AGENCY

FROM: GARY BROWN, EXECUTIVE DIRECTOR

MEETING DATE: July 10, 2012

ORIGINATING DEPT.: Michael McGrane, Finance Director

SUBJECT: Adoption of Resolution No. SA-12-09 of the Imperial Beach Redevelopment Agency Successor Agency Approving the Payment of Successor Agency Funds in the Total Amount of \$372,114.91 to the County of San Diego as Demanded by the County of San Diego Pursuant to California Health and Safety Code section 34183.5(b)(2)(A) Due on or Before July 12, 2012 and Making the Payment Under Protest With Reservation of Rights.

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**BACKGROUND:**

On June 27, 2012, the Legislature passed and the Governor signed AB 1484, a Fiscal Year 2012-2013 trailer bill. AB 1484 makes technical and substantive amendments to ABx1 26 which dissolved redevelopment agencies throughout the state as of February 1, 2012. AB 1484 took effect immediately. AB1484 sets forth new and additional procedures for successor agencies to follow during the unwind process of the former redevelopment agency.

**CURRENT CONSIDERATION:**

The first effect of AB 1484 is that the Successor Agency was notified on July 9, 2012 by the County of San Diego ("County") that a payment is owed to the County in the amount of \$372,114.91 by July 12, 2012 (See Attachment 2). The payment is being demanded pursuant to California Health and Safety Code section 34183.5(b)(2)(A) which attempts to distribute any residual amounts of funds that would have been paid to the taxing agencies if certain provisions of ABx1 26 had gone into effect according to its terms and had not been stayed and reformed by the California Supreme Court in January of 2012.

Although it is the Successor Agency's opinion that most, if not all, of AB 1484 is unconstitutional, and that the County's demand and its calculation are inaccurate and illegal and the mechanism for its enforcement illegal and unconstitutional, staff recommends that the payment be made at this time under protest and with a reservation of rights because the penalties for non-payment to both the Successor Agency and the City of Imperial Beach ("City") pursuant to AB 1484 are so harsh. Specifically, if the payment demanded by the County is not made by the Successor Agency by July 12, 2012, then the Successor Agency is subject to penalties (of 10% of the amount owed plus 1.5% for each month payments are not made), the City is subject to penalties (of 10% of the amount owed plus 1.5% for each month the payments are late), the City will not receive the distribution of sales and use tax scheduled to be distributed on July 18, 2012, or any subsequent payment, up to the payment amount demanded by the County, and the Successor Agency is prohibited from

making any payments on obligations other than bond debt service payments until full payment is made to the County.

**ENVIRONMENTAL DETERMINATION:**

Pursuant to Title 14 of the California Code of Regulations, Section 15378(b)(4), this item is not subject to the California Environmental Quality Act ("CEQA") review because the recommended approvals are not considered a project, and are governmental funding mechanisms and fiscal activities that do not involve any commitment to any specific project which may result in a potentially significant environmental impact.

**FISCAL IMPACT:**

The Successor Agency's proposed payment of \$372,114.91 to the County as payment in full of the payment demanded by the County pursuant to California Health and Safety Code section 34183.5(b)(2)(A) using a combination of housing tax increment funds and property tax will potentially have an impact on the ability of the Successor Agency to make payments on enforceable obligations.

**DEPARTMENT RECOMMENDATION:**

Staff recommends the Successor Agency:

1. Adopt Resolution No. SA-12-09.

**EXECUTIVE DIRECTOR'S RECOMMENDATION:**

Approve Department recommendation.



Gary Brown, Executive Director

Attachment:

1. Resolution No. SA-12-09.
2. Demand Letter from County

## RESOLUTION NO. SA-12-09

**A RESOLUTION OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY APPROVING THE PAYMENT OF SUCCESSOR AGENCY FUNDS IN THE TOTAL AMOUNT OF \$372,114.91 TO THE COUNTY OF SAN DIEGO AS DEMANDED BY THE COUNTY OF SAN DIEGO PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTION 34183.5(b)(2)(A) DUE ON OR BEFORE JULY 12, 2012 AND MAKING THE PAYMENT UNDER PROTEST WITH A RESERVATION OF RIGHTS**

**WHEREAS**, the Imperial Beach Redevelopment Agency ("Redevelopment Agency") was a redevelopment agency in the City of Imperial Beach ("City"), duly created pursuant to the California Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the California Health and Safety Code) ("Redevelopment Law"); and

**WHEREAS**, the City Council has adopted redevelopment plans for Imperial Beach's redevelopment project areas, and from time to time, the City Council has amended such redevelopment plans; and

**WHEREAS**, the Redevelopment Agency was responsible for the administration of redevelopment activities within the City; and

**WHEREAS**, AB x1 26 ("AB 26") and AB x1 27 ("AB 27") were signed by the Governor of California on June 28, 2011, making certain changes to the Redevelopment Law, including adding Part 1.8 (commencing with Section 34161) ("Part 1.80") and Part 1.85 (commencing with Section 34170) ("Part 1.85") to Division 24 of the California Health and Safety Code ("Health and Safety Code"); and

**WHEREAS**, the California Redevelopment Association and League of California Cities filed a lawsuit in the Supreme Court of California (*California Redevelopment Association, et al. v. Matosantos, et al.*, Case No. S194861) alleging that AB 26 and AB 27 were unconstitutional; and

**WHEREAS**, on December 29, 2011, the Supreme Court issued its opinion in the *Matosantos* case largely upholding as constitutional AB 26, invalidating as unconstitutional AB 27, and holding that AB 26 may be severed from AB 27 and enforced independently; and

**WHEREAS**, the Supreme Court generally reformed and revised the effective dates and deadlines for performance of obligations under Health and Safety Code Part 1.85 of AB 26 arising before May 1, 2012 to take effect four months later, while leaving the effective dates or deadlines for performance of obligations under Health and Safety Code Part 1.8 of AB 26 unchanged; and

**WHEREAS**, as a result of the Supreme Court's decision, and on February 1, 2012, all California redevelopment agencies were dissolved, successor agencies were established as successor agencies to the former redevelopment agencies pursuant to Health and Safety Code Section 34173, and successor agencies were tasked with paying, performing and enforcing the enforceable obligations of the former redevelopment agencies and winding down the affairs of the former redevelopment agencies; and

**WHEREAS**, the City Council of the City adopted Resolution No. 2012-7136 on January 5, 2012, pursuant to Part 1.85, electing for the City to serve as the successor agency to the Redevelopment Agency upon the dissolution of the Redevelopment Agency under AB 26 ("Successor Agency"); and

**WHEREAS**, the Successor Agency and Oversight Board reviewed and approved the Recognized Obligation Payment Schedules ("ROPS") for the periods of (1) January 1, 2012 through June 30, 2012 and (2) July 1, 2012 through December 31, 2012; and

**WHEREAS**, the State Department of Finance did not timely object to any items on the ROPS 1 or ROPS 2 of the Successor Agency; and

**WHEREAS**, on June 27, 2012, the State Legislature approved and the Governor signed AB 1484 which amended and added new provisions to the Health and Safety Code with respect to the dissolution process for redevelopment agencies; and

**WHEREAS**, on July 9, 2012, the County of San Diego ("County") sent the City a demand letter for the Successor Agency's payment in the total amount of \$372,114.91 to the County by July 12, 2012 pursuant to Health and Safety Code section 34183.5(b)(2)(A), which attempts to distribute any residual amounts of funds that would have been paid to the taxing agencies if certain provisions of ABx1 26 had gone into effect according to its terms and had not been stayed and reformed by the California Supreme Court in January of 2012; and

**WHEREAS**, pursuant to AB 1484, if the payment demanded by the County is not made by the Successor Agency by July 12, 2012, then the Successor Agency is subject to penalties (of 10% of the amount owed plus 1.5% for each month payments are not made), the City is subject to penalties (of 10% of the amount owed plus 1.5% for each month the payments are late), the City will not receive the distribution of sales and use tax scheduled to be distributed on July 18, 2012, or any subsequent payment, up to the payment amount demanded by the County, and the Successor Agency is prohibited from making any payments on obligations other than bond debt service payments until full payment is made to the County; and

**WHEREAS**, because of the unduly harsh penalties and consequences to both the Successor Agency and the City if payment as demanded by the County is not made by the Successor Agency by July 12, 2012, staff of the Successor Agency proposes to make said payment to the County from a combination of housing tax increment funds and property tax held by the Successor Agency and to make said payment under protest and with a reservation of rights; and

**WHEREAS**, the Successor Agency believes that the County's payment demand and its calculation are inaccurate and illegal and the mechanism for its enforcement are illegal and unconstitutional. Therefore, the Successor Agency's payment to the County is to be made with a complete reservation of all rights, including but not limited to, challenging the accuracy and legality of the County's demand for payment and its calculation and the legality and constitutionality of the mechanism for its enforcement and any and all related legal and factual issues; and

**WHEREAS**, the action pursuant to this Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 *et seq.*, hereinafter referred to as the "Guidelines"), and the City's environmental guidelines; and

**WHEREAS**, the action pursuant to this Resolution is not a "project" for purposes of

CEQA, as that term is defined by Guidelines Section 15378, because the action pursuant to this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, pursuant to Section 15378(b)(5) of the Guidelines; and

**WHEREAS**, all of the prerequisites with respect to the approval of this Resolution have been met.

**NOW, THEREFORE, BE IT RESOLVED** by the Imperial Beach Redevelopment Agency Successor Agency, as follows:

1. The foregoing recitals are true and correct and are a substantive part of this Resolution.
2. The adoption of this Resolution is not intended to waive, and shall not constitute a waiver, by the Successor Agency of any rights that the Successor Agency may have to challenge, through administrative or judicial proceedings, the effectiveness and/or legality of all or any portion of AB X1 26 or AB 1484, any determinations rendered or actions or omissions to act by any public agency or government entity or division in the implementation of AB X1 26 and AB 1484, and/or the accuracy and legality of the County's demand for payment and its calculation and the legality and constitutionality of the mechanism for its enforcement and any and all related legal and factual issues.
3. The Executive Director, or designee, is hereby authorized and directed to make the payment in the total amount of \$372,114.91 to the County as payment in full of the payment demanded by the County pursuant to Health and Safety Code section 34183.5(b)(2)(A) using a combination of housing tax increment funds and property tax, and to make said payment under protest and with a reservation of rights.
4. The Executive Director, or designee, is hereby authorized and directed take such other actions and execute such other documents as are necessary to effectuate the intent of this Resolution on behalf of the Successor Agency.
5. The Successor Agency determines that the action pursuant to this Resolution is not a "project" for purposes of CEQA, as that term is defined by Guidelines Section 15378, because the action pursuant to this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, pursuant to Section 15378(b)(5) of the Guidelines.
6. This Resolution shall take effect upon the date of its adoption.

**PASSED, APPROVED, AND ADOPTED** by the Imperial Beach Redevelopment Agency Successor Agency at its meeting held on the 11<sup>th</sup> day of July 2012, by the following vote:

AYES:	BOARDMEMBERS:	
NOES:	BOARDMEMBERS:	NONE
ABSENT:	BOARDMEMBERS:	NONE

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JAMES C. JANNEY  
CHAIRPERSON

ATTEST:

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JACQUELINE M. HALD, MMC  
SECRETARY



DONALD F. STEUER  
CHIEF FINANCIAL OFFICER  
(619) 531-5413  
FAX (619) 531-5219

# County of San Diego

AUDITOR AND CONTROLLER  
1600 PACIFIC HIGHWAY STE 166, SAN DIEGO, CALIFORNIA 92101-2478

TRACY M. SANDOVAL  
ASST. CHIEF FINANCIAL OFFICER/  
AUDITOR & CONTROLLER  
(619) 531-5413  
FAX (619) 531-5219

July 9, 2012

Gregory Wade  
City of Imperial Beach  
825 Imperial Beach Boulevard  
Imperial Beach, CA 91932

Dear Mr. Wade:

## DEMAND FOR PAYMENT PURSUANT TO AB 1484

Pursuant to Health and Safety (H&S) Code Section 34183.5(b)(2)(A), our office has determined the residual balance that your agency must remit for allocation to affected taxing entities no later than **July 12, 2012**, is as follows:

Tax Increment (Nov 2011 to Jan 2012)	\$3,806,946.65
Service Fee	(\$14,616.74)
Pass-through payment	-
DOF approved Max RPTTF (Exhibit 12 column E)	(\$3,420,215.00)
Residual Balance	\$372,114.91

The DOF approved RPTTF amount above is based on Exhibit 12 as updated on July 6, 2012 at 5:00 p.m. Our office will send a revised letter if the DOF makes any revisions to Exhibit 12.

We will accept remittances via wire transfer (wiring instructions attached) or a warrant. Please notify us immediately which payment method your agency will utilize. If your agency chooses to send a warrant, please send it to the address below **and** also send an electronic copy of the warrant to [PTS.FGG@sdcounty.ca.gov](mailto:PTS.FGG@sdcounty.ca.gov).

Please send warrant to:

County of San Diego  
Auditor and Controller  
Property Tax Services  
1600 Pacific Highway, Room 077  
San Diego, CA 92101-2478



Demand for Payment Pursuant to AB 1484  
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July 9, 2012

Please be advised that in accordance with H&S 34183.5(b)(2)(C), failure to make this payment by **July 12, 2012** will result in civil penalties for your agency and the City. Additionally, if full payment is not received by July 12, 2012, your agency is prohibited from making payments for obligations, other than bond debt service; and the City will not receive its distribution of sales and use tax beginning July 18, 2012.

If you have any questions, please contact Nenette de Jesus or Juan Perez of Property Tax Services at (619) 531-5399.

Sincerely,

A handwritten signature in black ink, appearing to read "Tracy M. Sandoval". The signature is fluid and cursive, with the first name "Tracy" being more legible than the last name "Sandoval".

TRACY M. SANDOVAL  
Auditor and Controller/Assistant Chief Financial Officer

PTS:JP:ge

Attachment